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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,030	02/23/2004	Radmond Vincent Arceta	086554-1056	3782

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FOLEY AND LARDNER LLP
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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/783,030	Applicant(s) ARCETA ET AL.	
	Examiner Frank B. Vanaman	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10,23,24,35,36 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10,23,24,35,36,40 and 41 is/are allowed.
- 6) ☒ Claim(s) 42, 43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 13, 2007 has been entered.

Status of Claims

2. Claims 10, 23, 24, 35, 36 and 40-43 are pending. Claims 1-9, 11-22, 25-34, and 37-39 have been canceled.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al. (US 6,721,178, cited previously) in view of Manalang et al. (US PGPub. 2002/0165641). Clark et al. teach a cart (10 in general) for use in a medical care environment (col. 1, lines 18-27), having a work platform (86) and at least one compartment (below 86, above 70), for containing an item (e.g., on 70), a base (78a, 89b) configured to be movable in forward and rearward directions, a height adjustment mechanism (22 in general) configured to position the work surface at one of a plurality of heights, the work platform and base both including portions projecting forwardly and rearwardly from the height adjustment portions, the compartment being accessible on a front face to a user facing the rear (e.g., away from the viewer, figures 4a, 4b). The reference to Clark et al. fails to explicitly teach plural compartments. It is old and well known to provide plural storage compartments on movable carts for accommodating additional items, and it would have been obvious to one of ordinary skill in the art at the time of the invention to provide at least one further compartment on the cart of Clark et al. for the purpose of accommodating or storing additional items. The reference to Clark et al. fails to teach the provision of a keyless entry system for locking and unlocking the compartments. Manalang et al. teach that it is well known to both provide (1) a plurality

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of compartments (e.g., 32a, 40a, etc.) on cart for accommodating items, and further (2) an electronic keyless entry system (20, 22, 24, 70) on a cart used in a medical care environment or allowing selective access to certain compartments. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cart taught by Clark et al. with at least one further compartment for the purpose of accommodating further items, and additionally, to provide at least one further compartment which may be locked by a keyless entry/locking system as taught by Manalang et al. for the purpose of limiting access to the selectively lockable compartment to only authorized personnel.

5. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al. (US 6,721,178, cited previously) in view of George et al. (WO 03/013307 A1, cited previously). Clark et al. teach a cart (10 in general) having a work platform (86) and at least one compartment (below 86, above 70), for containing an item (e.g., on 70), a base (78a, 89b) configured to be movable in forward and rearward directions, a height adjustment mechanism (22 in general) configured to position the work surface at one of a plurality of heights, including a stationary casing (74) connected to the base, a telescoping casing (72) connected to the platform and movable with respect to casing 74, a driver (stop element referred to at col. 9, line 57) which is operated by an actuator (42) located on the work platform, and disposed above a bottom of the compartment, the work platform and base both including portions projecting forwardly and rearwardly from the height adjustment portions, the compartment being accessible on a front face to a user facing the rear (e.g., away from the viewer, figures 4a, 4b). The reference to Clark et al. fails to explicitly teach the actuator as being positioned above the compartment. George et al. teach that it is quite well known to provide a storage or accommodation space, such as a compartment (414), for elements wherein mechanical portions not intended for storage in the space are not positioned in that space, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the compartment taught by Clark et al. to be free of a mechanical actuator, as suggested by George et al., for example locating the actuator at a location above the compartment of Clark et al. for the purpose of preventing interference

between the items located in the compartment and the actuator, thus beneficially allowing complete use of the compartment.

6. Alternatively to the above, claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al. (US 6,721,178, cited previously) in view of Rice et al. (US 4,440,096). Clark et al. teach a cart (10 in general) having a work platform (86) and at least one compartment (below 86, above 70), for containing an item (e.g., on 70), a base (78a, 89b) configured to be movable in forward and rearward directions, a height adjustment mechanism (22 in general) configured to position the work surface at one of a plurality of heights, including a stationary casing (74) connected to the base, a telescoping casing (72) connected to the platform and movable with respect to casing 74, a driver (stop element referred to at col. 9, line 57) which is operated by an actuator (42) located on the work platform, and disposed above a bottom of the compartment, the work platform and base both including portions projecting forwardly and rearwardly from the height adjustment portions, the compartment being accessible on a front face to a user facing the rear (e.g., away from the viewer, figures 4a, 4b). The reference to Clark et al. fails to explicitly teach the actuator as being positioned above the compartment and on the work platform. Rice et al. teach that it is very old and well known to provide a work platform (18) which is vertically adjustable (see figures 2, 6, 10, etc.) with an actuator control (30) which is located on the platform (18). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the actuator taught by Clark et al. to be located on the work platform as suggested by Rice et al. for the purpose of locating the actuation control in a conveniently accessible position, rather than recessed within a compartment, the benefit resulting in a greater ease with which a user may change the platform height.

Allowable Subject Matter

7. Claims 10, 23, 24, 35, 36, 40 and 41 are allowed.

Response to Comments

8. Applicant's comments, filed with the request for continued examination and amendment have been carefully considered. Applicant has asserted that the combination of art employed to reject claim 42 is not proper because there is no

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teaching to provide a plurality of compartments. The examiner expresses some substantial surprise that applicant would make such an argument. Initially the examiner notes that it is well known to provide duplicates of taught elements, and as such, the knowledge to duplicate a storage element (such as taught by Clark et al.) for the purpose of providing additional storage would be well within the skill set of the ordinary practitioner. Applicant's implication that somehow the additional compartment must also be used as a keyboard tray is noted, but is understood to be an unreasonably narrow assessment of the skill level of the ordinary practitioner, inasmuch as (1) there is no evidence that the cart taught by Clark et al. must be provided with only keyboards in the taught compartment and further (2) that it is deemed to be quite well known that identical storage devices or supports need not be limited by solely storing a single type of item (as evidenced, for example, by the exceptionally well known practices of providing a tool- or parts-carrier with plural compartments for storing disparate items, providing different books and decorative items on different shelves in a book case, or locating different articles to be stored in separate storage containers based on intended use or compatibility). Further, applicant is reminded that the modifying reference to Manalang et al. teach that it is well known to provide a cart with a plurality of compartments for storing separate and distinct items, as is clear from their presentation of numerous compartments (32a, 40a, etc.). Additionally applicant is reminded that the duplication of existing taught elements does not constitute a patentable distinction unless such a duplication brings forth a new and unexpected result. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). In this case, the provision of plural compartments results in at least the predictable benefits of: providing additional storage space and/or allowing disparate items to be kept separate for organizational reasons. Note that Manalang et al. additionally teach different levels of access to different storage locations. As regards the changing of the function of the cart taught by Clark et al, the examiner notes that Manalang et al. teach a beneficial modification (allowing the provision of multiple storage locations and further allowing lockable access to certain of the locations) the application of which to other carts would constitute an improvement having a predictable result, which is more particularly notable in view of both the carts to

Clark et al. and Manalang et al. being explicitly taught for use in a medical/clinical environment. In this case, applicant is reminded that the proposed modification is directed to the addition of a compartment which is lockable. Applicant's comments directed to claim 43 are noted, and the examiner notes that the previous rejection based on Clark et al. alone has been withdrawn in view of these comments. The examiner additionally notes, that as regards the location of the actuator, Clark et al. place it essentially in the interior of the compartment, which limits convenient access to the actuator. George et al. (cited previously) teach that it is quite well known to provide a compartment (such as 414) which does not have an actuator in it, and it is deemed obvious to provide Clark et al.'s compartment with the actuator not positioned therein so as to allow the compartment to be fully utilized. Alternatively, Rice teaches that it is quite old and well known to locate an actuator on a work surface, and as such, it would be obvious to locate the actuator taught by Clark et al. on the surface as suggested by Rice so as to promote improved access to it. In this case, as regards Clark et al.'s actuator location, it can be deemed to be an aspect of the invention which is ready for improvement, in that access to the actuator of Clark et al. would be compromised yet further still if an article were to be located in the compartment. Rice teaches that it is quite well known to locate an actuator in a more accessible location. Applicant's comments concerning the alleged inoperability of the reference to Clark et al. as based on the previous office action is not supported by a showing of any evidence. There is no statement in the office action asserting the location of the actuator renders the cart inoperable. The actuator location may be deemed inconvenient, and/or as allowing only limited access, and/or interfering with elements placed in the compartment, however inoperability has not been asserted, and applicant is cautioned that care should be taken to avoid forming conclusions that do not represent what is actually set forth, as such conclusions are not at all helpful to meaningful prosecution. If applicant believes that the reference to Clark et al. is inoperative, then applicant should clearly and unequivocally state such a belief, and support such a statement with a showing of facts. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965).

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kearney (US 4,894,600) and Nagy (US 5,174,223) teach that it is quite well known to provide controls for actuation of the height of a work surface on or about the work surface itself.

10. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

F. VANAMAN
Primary Examiner
Art Unit 3618

/Frank B Vanaman/
Primary Examiner, Art Unit 3618